**EXPLANATORY STATEMENT**

Issued by the Minister for the Environment and Water

*Recycling and Waste Reduction Act 2020*

*Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2022*

**Legislative Authority**

The *Recycling and Waste Reduction Act 2020* (RAWR Act) establishes a legislative framework to enable Australia to more effectively manage the environmental and human health and safety impacts of products and waste material. This includes, in particular, impacts associated with the disposal of waste materials and products.

Chapter 3 of the RAWR Act deals with product stewardship. It establishes a framework providing the basis for those who design, import, manufacture and distribute products to take greater responsibility for the environmental impacts of those products. Product stewardship involves the shared responsibility for reducing the environmental, health and safety footprint of manufactured goods and materials across the life cycle of a product stream (including material streams).

Part 4 of Chapter 3 of the RAWR Act provides a framework for the regulation of co-regulatory product stewardship arrangements in relation to a product. A number of provisions in Chapter 3 set the parameters of the Minister’s rule-making power, which include specifying which parties are liable for co-regulatory product stewardship in relation to a product, the kinds of outcomes to be achieved by an approved co-regulatory arrangement, the matters to be dealt with by a co-regulatory arrangement, and aspects of the administration of co‑regulatory arrangements.

Subsection 188(1) of the RAWR Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules.

The *Recycling and Waste Reduction (Product Stewardship –Televisions and Computers) Amendment (Imported Products) Rules 2022* (the Amendment Rules) are made under subsection 188(1) of the RAWR Act. The Amendment Rules are made in reliance on subsection 33(3) of the *Acts Interpretation Act 1901*.

The Amendment Rules are made for the purposes of subsection 77(1) of the RAWR Act. Subsection 77(1) provides that a liable party, in relation to a product, is a person specified as a liable party in relation to that product in the rules. Subsection 79(1) provides that Rules made for the purposes of subsection 77(1) specifying liable parties in relation to a product must also specify one or more outcomes to be achieved by an approved co-regulatory arrangement that relates to that product.

**Purpose**

The Amendment Rules amend the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021* (NTCRS Rules) to ensure that targets and liability under the National Television and Computer Recycling Scheme (NTCRS) are not unreasonably distorted by erroneous import declarations.

**Background**

The NTCRS Rules provide the regulatory basis for the approval of co‑regulatory product stewardship arrangements that give effect to the NTCRS.

The NTCRS Rules, in conjunction with the RAWR Act, set out how approved co-regulatory arrangements under the NTCRS are regulated. Companies who import or manufacture above the relevant threshold for televisions or computer products (including printers and other peripheral products) in a financial year are regulated as liable parties for the next financial year and are required to be members of an approved co-regulatory arrangement that financial year. Approved co-regulatory arrangements under the RAWR Act and NTCRS Rules are managed by an administrator, who is responsible for achieving the recycling outcomes to be achieved by that arrangement (including the recycling targets that apply to that arrangement). Co-regulatory arrangements are approved by the Minister under the RAWR Act.

The NTCRS Rules set out the details of who will be a liable party for a financial year, and therefore required to join an approved co-regulatory arrangement in relation to television or computer products for the next financial year. This is based on the number of television or computer products the person has imported or manufactured in Australia in the previous financial year.

Whether a person is a liable party for a financial year, and the number of television and computer products that person has imported or manufactured, also affects the amount of the recycling targets and the import and manufacture share for each approved co-regulatory arrangement for that year. This is because these calculations are based on the number of previous imports and manufacturing by persons who are liable parties for the relevant financial year.

Information on a person’s imports of television or computer products is derived from import declarations made by the importer under the *Customs Act 1901* (Customs Act). Section 4A of the NTCRS Rules implicitly acknowledges that the Customs Act allows importers to make certain changes to their import declarations following the import of the relevant goods. Its purpose is to set a settlement date of 31 October of a financial year. After that date, changes to import declarations that reduce either the number of television or computer products specified in the declaration, or the converted weight of television or computer products specified in the declaration, will not be taken into account under the NTCRS Rules for the purposes of determining whether a person has imported the product during a particular financial year.

The purpose of section 4A is to allow the necessary calculations based on a person’s imports (ie the liable parties for the financial year, and the outcomes for co-regulatory arrangements – such as the recycling targets and the import or manufacture share that apply to each approved co-regulatory arrangement) to be made with certainty after 31 October, rather than having to redo the calculations if import declarations were amended at a later date.

This is important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed. Having to redo the calculations whenever a change (such as to correct an error) is made to a relevant import declaration would result in increased administrative costs for administrators of co-regulatory arrangements and uncertainty over targets and liabilities under the NTCRS.

However, it has become apparent that, while generally important to ensure that liable parties and outcomes can be finalised in sufficient time to allow for proper and effective administration of the NTCRS, the inflexibility of the settlement date in section 4A of the NTCRS Rules sometimes results in perverse outcomes for industry and the NTCRS.

**Impact and Effect**

The Amendment Rules amend the NTCRS Rules to provide some limited flexibility in the settlement date in section 4A.

New subsection 4A(2) has the effect that a change to an import declaration that reduces either the number of television or computer products specified in the declaration, or the converted weight of television or computer products specified in the declaration, can be taken into account for the purposes of determining whether a person has imported a product during a particular financial year if the Minister is satisfied that there are exceptional circumstances.

New subsection 4A(3) sets out a number of matters to which the Minister is required to have regard when determining whether exceptional circumstances exist.

This approach allows the Minister to decide on a case-by-case basis whether to take account of a particular change to an import declaration. This will ensure that calculations are not unreasonably distorted by errors, while retaining the benefits of the settlement date more generally.

**Pre-conditions to making the Amendment Rules**

The Minister for the Environment and Water is satisfied that the requirements in subsection 77(3) of the RAWR Act are met.

As required by subsection 77(4) of the RAWR Act, the special circumstances that justify the making of the Amendment Rules despite television and computer products not having been included in a Minister’s priority list at least 12 months beforehand are that the Amendment Rules merely address an administrative issue in relation to an existing regulated product. They do not add any new products to the NTCRS Rules, nor do they change the way the NTCRS operates. Television and computer products have been regulated as part of the NTCRS since 2011 and in the NTCRS Rules since 1 July 2021.

**Consultation**

The Amendment Rules make changes that are minor and machinery in nature to provide limited administrative flexibility to the settlement date to deal with errors in import declarations. They do not change the way the NTCRS operates. On this basis, consultation with industry on the specific instrument was not conducted.

**Details and Operation**

Details of the Amendment Rules are set out in Attachment A.

The Amendment Rules commence on the day after they are registered.

**Other**

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A full statement of compatibility is set out in Attachment B.

**ATTACHMENT A**

**Details of the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2022***

**Section 1 – Name**

1. Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2022* (the Amendment Rules).

**Section 2 – Commencement**

1. Section 2 provides that the Amendment Rules commence on the day after they are registered.

 **Section 3 – Authority**

1. Section 3 provides that the Amendment Rules are made under the *Recycling and Waste Reduction Act 2020* (the RAWR Act).

**Section 4 – Schedules**

1. Section 4 provides that each instrument that is specified is amended or repealed as set out in a Schedule to the instrument and has effect according to its terms.
2. Schedule 1 of the Amendment Rules amends the *Recycling and Waste Reduction (Product Stewardship - Televisions and Computers) Rules 2021* (NTCRS Rules).

**Schedule 1 – Amendments**

***Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021***

**Item 1**

1. Item 1 of Schedule 1 to the Amendment Rules amends existing section 4A of the NTCRS Rules to insert a (1) at the start of the section. This amendment is consequential to the amendment made by item 4 and has the effect that existing section 4A is now subsection 4A(1).

**Item 2**

1. Item 2 of Schedule 1 to the Amendment Rules amends existing section 4A to omit the word ‘considered’ and substitute ‘taken into account’. This amendment is intended to clarify and modernise the drafting style. Item 2 makes no substantive change to the operation of the provision.

**Item 3**

1. Item 3 of Schedule 1 to the Amendment Rules amends existing paragraph 4A(a) to omit the words ‘next following’ and substitute ‘financial year following the’. This amendment is intended to clarify and simplify the drafting style. Item 3 makes no substantive change to the operation of the provision.

**Item 4**

1. The NTCRS Rules set out the details of who will be a liable party for a financial year, and therefore required to join an approved co-regulatory arrangement in relation to television or computer products for the following financial year. This is based on the number of television or computer products the person has imported or manufactured in Australia in the previous financial year.
2. Whether a person is a liable party for a financial year, and the number of television and computer products that person has imported or manufactured, affects the amount of the recycling targets and the import and manufacture share for each approved co-regulatory arrangement for that year. This is because these calculations are based on the number of previous imports and manufacturing by persons who are liable parties for the relevant financial year.
3. Information on a person’s imports of television or computer products is derived from import declarations made by the importer under the *Customs Act 1901* (Customs Act). The Customs Act allows importers to make certain changes to their import declarations following the import of the relevant goods.
4. Existing section 4A of the NTCRS Rules provides that, for the purposes of determining in this instrument whether a product was imported in a financial year, a change made to an import declaration must not be considered if:
	1. the change is made after 31 October of the next following financial year in which the import declaration was made; and
	2. the change either reduces the number of television or computer products specified in the declaration or reduces the converted weight of any kind of television or computer product specified in the declaration.
5. The purpose of existing section 4A is to set a settlement date of 31 October of a financial year, after which certain changes to import declarations cannot be taken into account for the purposes of calculations under the NTCRS Rules based on a person’s imports (ie the liable parties for the financial year, and the outcomes for co-regulatory arrangements – such as the recycling targets and the import or manufacture share that apply to each approved co-regulatory arrangement).
6. This is to ensure that these calculations can be made with certainty after that date, rather than having to redo the calculations if import declarations were amended at a later date. This is important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed. Having to redo the calculations when a change (such as a correction) is made to a relevant import declaration would result in increased administrative costs for administrators of co-regulatory arrangements and uncertainty over targets and liabilities under the NTCRS.
7. However, while generally important to ensure that liable parties and outcomes can be finalised in sufficient time to allow for proper and effective administration of the NTCRS, the inflexibility of the settlement date in existing section 4A sometimes results in perverse outcomes for industry and the NTCRS. For instance, where very obvious typographical errors in import declarations are not corrected prior to 31 October, this can result in very distorted recycling targets for both the co-regulatory arrangement of which the importer is a member and the NTCRS as a whole. For example, an import declaration may state that a person had imported 200,000 television or computer products in a financial year instead of 20,000 because of the incorrect position of a decimal place. Under existing section 4A, this error would not be able to be corrected after 31 October, resulting in significantly distorted calculations for both the relevant financial year and the following years (given how the recycling targets are calculated).
8. Item 4 of Schedule 1 to the Amendment Rules amends existing section 4A of the NTCRS Rules to permit limited flexibility in the settlement date. Under new subsection 4A(2), a change to an import declaration that reduces either the number of television or computer products specified in the declaration, or the converted weight of television or computer products specified in the declaration, can be taken into account for the purposes of determining whether a person has imported a product during a particular financial year if the Minister is satisfied that there are exceptional circumstances that justify taking the change into account. In deciding whether there are exceptional circumstances, the Minister is required to have regard to the matters listed in new subsection 4A(3) and any other matters the Minister considers relevant.
9. New subsection 4A(3) sets out a number of matters the Minister is required to have regard to when deciding whether they are satisfied that there are exceptional circumstances that justify taking a post-31 October change to an import declaration into account for the purposes of NTCRS calculations for a particular financial year. These matters are:
	1. the reason for the change in the import declaration;
	2. the nature of the change;
	3. the reason why the change was not made on or prior to 31 October of the financial year following the import declaration being made;
	4. whether the importer has previously made a change to an import declaration after 31 October of the financial year following the import declaration being made;
	5. whether taking the change in to account would unreasonably impact other importers or co-regulatory arrangements; and
	6. whether not taking the change into account would unreasonably distort the recycling target or the import or manufacture share for the relevant co-regulatory arrangement.
10. This approach allows the Minister to decide on a case-by-case basis whether to take account of a particular change to an import declaration that was made after the 31 October settlement date. This will ensure that calculations are not unreasonably distorted by errors, while retaining the benefits of the settlement date more generally.
11. The Minister’s decision whether to take a particular change in an import declaration into account (for the purposes of the NTCRS calculations) because of exceptional circumstances is not merits reviewable. This is because the changes to calculations affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed. In addition, calculations need to be finalised within a specific period of time in order to allow co-regulatory arrangements sufficient time to meet their recycling targets (arising from the calculation) within the statutory timeframes. Delays to finalised calculations because of an outstanding merits review application in relation to a particular import declaration would likely result in co-regulatory arrangements not being able to comply with their statutory obligations, which would undermine the environmental objectives of the RAWR Act and the NTCRS Rules. The Administrative Review Council has recognised that such decisions of broad application that are not directed at the circumstances of a particular person as justifiable to exclude merits review (see paragraphs 3.1 to 3.7 of *What decisions should be subject to merit review?*).

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2022***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the instrument**

The *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2022* (the Amendment Rules) are made under the *Recycling and Waste Reduction Act 2020* (the RAWR Act).

The *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021*, in conjunction with the RAWR Act, set out how approved co-regulatory arrangements under the NTCRS are regulated. Companies that import or manufacture above the threshold of televisions or computer products (including printers and other peripheral products) are regulated as ‘liable parties’ who are required to be members of an approved co-regulatory arrangement each financial year. Approved co-regulatory arrangements under the RAWR Act and NTCRS Rules are managed by an administrator, who is responsible for achieving the recycling outcomes to be achieved by that arrangement (including the recycling targets that apply to that arrangement).

The NTCRS Rules set out the details of who will be a liable party for a financial year, and therefore required to join an approved co-regulatory arrangement in relation to television or computer products for the next financial year. This is based on the number of television or computer products the person has imported or manufactured in Australia in the previous financial year.

Whether a person is a liable party for a financial year, and the number of television and computer products that person has imported or manufactured, also affects the amount of the recycling targets and the import and manufacture share for each approved co-regulatory arrangement for that year. This is because these calculations are based on the amount of previous imports and manufacturing by persons who are liable parties for the relevant financial year.

Existing section 4A of the NTCRS Rules sets a settlement date of 31 October of a financial year. After that date, changes to import declarations that reduce either the number of television or computer products specified in the declaration or the converted weight of television or computer products specified in the declaration will not be taken into account for the purposes of determining whether a person imported a television or computer product in a financial year.

The purpose of existing section 4A is to allow the liable parties, and outcomes to be achieved by approved co-regulatory arrangements (including the recycling targets and the import or manufacture share that apply to a co-regulatory arrangement), to be confirmed by late October of each financial year, rather than being subject to change throughout the financial year.

This is important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed. Having to redo the calculations when a change (such as a correction) is made to a relevant import declaration would result in increased administrative costs for administrators of co-regulatory arrangements and uncertainty over targets and liabilities under the NTCRS.

However, while generally important to ensure that liable parties and outcomes can be finalised in sufficient time to allow for proper and effective administration of the NTCRS, the inflexibility of the settlement date in existing section 4A sometimes results in perverse outcomes for industry and the NTCRS. For instance, where very obvious typographical errors in import declarations are not corrected prior to 31 October, this can result in very distorted recycling targets for both the co-regulatory arrangement of which the importer is a member and the NTCRS as a whole.

For the reason, the Amendment Rules amends section 4A of the NTCRS Rules to permit limited flexibility in the settlement date. Under new subsection 4A(2), a change to an import declaration that reduces either the number of television or computer products specified in the declaration, or the converted weight of television or computer products specified in the declaration, can be taken into account for the purposes of determining whether a person has imported a product during a particular financial year if the Minister is satisfied that there are exceptional circumstances. New subsection 4A(3) sets out a number of matters the Minister is required to have regard to when determining whether they are satisfied that there are exceptional circumstances

This approach allows the Minister to decide on a case by case whether to take account of a particular change to an import declaration. This will ensure that calculations are not unreasonably distorted by errors, while retaining the benefits of the settlement date more generally.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Tanya Plibersek MP**

**Minister for the Environment and Water**